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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 BANK OF NEW YORK MELLON,

8 Plaintiff(s),

9 v.

10 CHRISTOPHER COMMUNITIES AT
11 SOUTHERN HIGHLANDS GOLF CLUB
HOMEOWNERS ASSOCIATION, et al.,

12 Defendant(s).
13

Case No. 2:17-CV-1033 JCM (GWF)

ORDER

14 Presently before the court is cross-defendant Christopher Communities at Southern
15 Highlands Golf Club Homeowners Association's (the "HOA") motion to dismiss cross-claimant
16 Alan and Theresa Lahrs as Trustees of the Lahrs Family Trust's (the "Lahrses") answer to
17 complaint, cross claims, and third-party complaint for lack of diversity jurisdiction. (ECF No. 92).
18 Cross-defendant Kupperlin Law Group, LLC ("Kupperlin") joined in the motion. (ECF No. 93).
19 The Lahrses filed a response (ECF No. 99), to which the HOA replied (ECF No. 101).

20 Also before the court is third-party plaintiff Lahrses' motion for partial summary judgment
21 for declaration of title insurance coverage. (ECF No. 127). Third-party defendants
22 Commonwealth Land Title Insurance Company ("Commonwealth") and Lawyers Title Company
23 of Nevada ("Lawyers Title") filed a response (ECF No. 142), to which the Lahrses replied (ECF
24 No. 144).

25 Also before the court is cross-defendant First 100, LLC's ("First 100") and third-party
26 defendant Jay Bloom's ("Bloom") motion to compel arbitration. (ECF No. 130). The Lahrses
27 filed a limited opposition. (ECF No. 133).
28

1 **I. Facts**

2 This case has been thoroughly litigated, and its procedural posture is staggering. As
3 relevant to this order, the instant action arises from a foreclosure sale of 11966 Port Labelle Drive,
4 Las Vegas, Nevada 89141. (ECF No. 1 at 3). The prior owners of 11966 Port Labelle Drive were
5 delinquent on their HOA assessments. (ECF No. 74 at 2). Red Rock Financial Services, acting
6 on behalf of the HOA, recorded a notice of delinquent assessment lien. *Id.*

7 Pursuant to a purchase and sale agreement, the HOA assigned its right to payment on the
8 delinquency to First 100 and retained its lien on the property. *Id.* Also pursuant to the purchase
9 and sale agreement, Kupperlin replaced Red Rock Financial Services as the HOA’s agent, and the
10 HOA promised that it would not send anyone to the foreclosure sale to bid “in any amount in
11 excess of the Opening Bid” of \$99. (ECF No. 59-2 at 9).

12 “Kupperlin was instructed not to postpone any foreclosure sale, even if few or no bidders
13 were present.” (ECF No. 59-2 at 9). As a result, Kupperlin foreclosed on the property. (ECF No.
14 74 at 2–3). First 100 purchased the for \$151. *Id.* at 3.

15 The court has already granted summary judgment in favor of the plaintiff Bank of New
16 York Mellon (“BNYM”) and quieted title in its favor; thus, its first priority lien still encumbers
17 the property. *See generally id.*

18 The Lahrsees filed a third-party complaint against Jay Bloom (“Bloom”) and crossclaims
19 against the HOA, Kupperlin, and First 100. (ECF No. 75). The Lahrsees allege intentional and
20 negligent misrepresentation against First 100, Bloom, and Kupperlin; fraudulent concealment
21 against First 100 and Bloom; fraud in the inducement against First 100; civil conspiracy against
22 First 100, Bloom, Kupperlin, and the HOA; and breach of the covenant of good faith and fair
23 dealing against First 100. *Id.*

24 The Lahrsees’ also filed a third-party complaint against Commonwealth and Lawyers Title
25 seeking a judicial declaration of insurance coverage and alleging breach of contract and breach of
26 the implied covenant of good faith and fair dealing. (ECF No. 114).

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1 **II. Legal Standard**

2 *A. Motion to dismiss*

3 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
4 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case
5 unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of Colville*
6 *Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, federal subject matter jurisdiction must
7 exist at the time an action is commenced. *Mallard Auto. Grp., Ltd. v. United States*, 343 F. Supp.
8 2d 949, 952 (D. Nev. 2004).

9 Federal Rule of Civil Procedure 12(b)(1) allows defendants to seek dismissal of a claim or
10 action for a lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Dismissal under Rule
11 12(b)(1) is appropriate if the complaint, considered in its entirety, fails to allege facts on its face
12 sufficient to establish subject matter jurisdiction. *In re Dynamic Random Access Memory (DRAM)*
13 *Antitrust Litig.*, 546 F.3d 981, 984–85 (9th Cir. 2008).

14 Although the defendant is the moving party in a 12(b)(1) motion to dismiss, the plaintiff is
15 the party invoking the court’s jurisdiction. As a result, the plaintiff bears the burden of proving
16 that the case is properly in federal court to survive the motion. *McCauley v. Ford Motor Co.*, 264
17 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189
18 (1936)). More specifically, the plaintiff’s pleadings must show “the existence of whatever is
19 essential to federal jurisdiction, and, if [plaintiff] does not do so, the court, on having the defect
20 called to its attention or on discovering the same, must dismiss the case, unless the defect be
21 corrected by amendment.” *Smith v. McCullough*, 270 U.S. 456, 459 (1926).

22 In moving to dismiss under Rule 12(b)(1), the challenging party may either make a “facial
23 attack,” confining the inquiry to challenges in the complaint, or a “factual attack” challenging
24 subject matter on a factual basis. *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2
25 (9th Cir. 2003). For a facial attack, the court assumes the truthfulness of the allegations, as in a
26 motion to dismiss under Rule 12(b)(6). *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813
27 F.2d 1553, 1559 (9th Cir. 1987). By contrast, when presented as a factual challenge, a Rule
28 12(b)(1) motion can be supported by affidavits or other evidence outside of the pleadings. *United*

1 *States v. LSL Biotechs.*, 379 F.3d 672, 700 n.14 (9th Cir. 2004) (citing *St. Clair v. City of Chicago*,
2 880 F.2d 199, 201 (9th Cir. 1989)).

3 *B. Motion for summary judgment*

4 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
5 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
6 show that “there is no genuine dispute as to any material fact and the movant is entitled to a
7 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is
8 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
9 323–24 (1986).

10 For purposes of summary judgment, disputed factual issues should be construed in favor
11 of the non-moving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
12 entitled to a denial of summary judgment, the nonmoving party must “set forth specific facts
13 showing that there is a genuine issue for trial.” *Id.*

14 In determining summary judgment, a court applies a burden-shifting analysis. The moving
15 party must first satisfy its initial burden. “When the party moving for summary judgment would
16 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a
17 directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has
18 the initial burden of establishing the absence of a genuine issue of fact on each issue material to
19 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)
20 (citations omitted).

21 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
22 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
23 element of the non-moving party’s case; or (2) by demonstrating that the nonmoving party failed
24 to make a showing sufficient to establish an element essential to that party’s case on which that
25 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
26 party fails to meet its initial burden, summary judgment must be denied and the court need not
27 consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
28 60 (1970).

1 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
2 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
3 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
4 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
5 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
6 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
7 631 (9th Cir. 1987).

8 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
9 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,
10 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
11 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
12 for trial. *See Celotex*, 477 U.S. at 324.

13 At summary judgment, a court’s function is not to weigh the evidence and determine the
14 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby,*
15 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all
16 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the
17 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
18 granted. *See id.* at 249–50.

19 *C. Motion to compel arbitration*

20 The Federal Arbitration Act (“FAA”) provides for the enforcement of arbitration
21 agreements in any contract affecting interstate commerce. 9 U.S.C. § 2; *AT&T Mobility LLC v.*
22 *Concepcion*, 563 U.S. 333, 339 (2011). A party to an arbitration agreement can invoke his or her
23 rights under the FAA by petitioning federal courts to direct that “arbitration proceed in the manner
24 provided for in such agreement.” 9 U.S.C. § 4. When courts grant a petition to compel arbitration,
25 the FAA requires stay of litigation “until such arbitration has been had[.]” *Id.* at § 3.

26 The FAA embodies a clear policy in favor of arbitration. *AT&T Mobility*, 563 U.S. at 339.
27 Courts must rigorously enforce arbitration agreements. *Hall Street Assoc., L.L.C. v. Mattel, Inc.*,
28 552 U.S. 576, 582 (2008). “[A]ny doubts concerning the scope of arbitrable issues should be

1 resolved in favor of arbitration.” *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir.
2 1999) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).
3 The FAA leaves no place for courts to exercise discretion, but instead mandates courts to enforce
4 arbitration agreements. *See Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 218 (1985).

5 However, arbitration is a “matter of contract” and the FAA does not require a party to
6 arbitrate “any dispute which he has not agreed so to submit.” *Howsam v. Dean Witter Reynolds,*
7 *Inc.*, 537 U.S. 79 (2002) (quotes and citation omitted). When determining whether a party should
8 be compelled to arbitrate claims: courts engage in a two-step process. *Chiron Corp. v. Ortho*
9 *Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). The court must determine: (1) whether
10 a valid agreement to arbitrate exists, and if it does; (2) whether the agreement encompasses the
11 dispute at issue. *Id.*

12 **III. Discussion**

13 *A. Motion to dismiss*

14 The HOA and Kupperlin move to dismiss on two grounds: (1) the court lacks diversity
15 jurisdiction and (2) the court should not assert supplemental jurisdiction over the Lahrse’s claims.¹
16 (ECF No. 92). Indeed, the HOA, Kupperlin, and the Lahrse are all residents of Nevada. (ECF
17 No. 1 at 2–3). Accordingly, the court lacks diversity jurisdiction over the Lahrse’s claims because
18 the parties are not diverse. Thus, the court must determine whether supplemental jurisdiction over
19 the Lahrse’s cross claims is proper.

20 “In order for a federal court to invoke supplemental jurisdiction . . . it must first have
21 original jurisdiction over at least one claim in the action.” *Exxon Mobil Corp. v. Allapattah Servs.*,
22 545 U.S. 546, 554 (2005). For a United States district court to have diversity jurisdiction under
23 28 U.S.C. § 1332, the parties must be completely diverse and the amount in controversy must
24 exceed \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a); *Matheson v.*
25 *Progressive Specialty Ins. Co.*, 319 F.3d 1098 (9th Cir. 2003). “Incomplete diversity destroys

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27 ¹ The court will not address the HOA and Kupperlin’s argument that the Lahrse’s answer,
28 cross claims, and third-party complaint were not timely filed. (ECF No. 92). The argument was
resolved by the Lahrse’s motion for extension of time (ECF No. 80), which the court granted (ECF
No. 81).

1 original jurisdiction with respect to all claims, so there is nothing to which supplemental
2 jurisdiction can adhere.” *Exxon Mobil Corp.*, 545 U.S. at 554.

3 The court invokes its “full Article III power to dispose of an entire action before the court
4 which comprises but one constitutional case” by asserting supplemental jurisdiction over related
5 claims. *Id.* (internal quotation marks, citations, and alteration omitted). Such claims “may be
6 viewed as part of the same case because they ‘derive from a common nucleus of operative fact.’”
7 *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 337 (2006) (quoting *United Mine Workers v.*
8 *Gibbs*, 383 U.S. 715, 725 (1966)). This principle is codified in 28 U.S.C. § 1367(a):

9
10 In any civil action of which the district courts have original jurisdiction, the district
11 courts shall have supplemental jurisdiction over all other claims that are so related
12 to claims in the action within such original jurisdiction that they form part of the
same case or controversy under Article III of the United States Constitution.

13 28 U.S.C. § 1367(a).

14 First, the Lahrsees’ cross claims do not “derive from a common nucleus of operative fact,”
15 so 28 U.S.C. § 1367(a) is not grounds for the court to assert jurisdiction over them. BNYM’s
16 claims concerned the HOA foreclosure sale itself, whereas the Lahrsees’ cross claims stem from
17 the subsequent sale from First 100 to the Lahrsees. *Compare* (ECF No. 1), *with* (ECF No. 75).

18 The Lahrsees allege intentional and negligent misrepresentation, fraudulent concealment,
19 fraud in the inducement, civil conspiracy, and breach of the covenant of good faith and fair dealing.
20 (ECF No. 75). All of these claims arise from post-foreclosure conduct by various parties and
21 representations made to the Lahrsees in a subsequent conveyance. *Id.* Although tangentially related
22 to the foreclosure sale, the circumstances of the Lahrsees’ purchase of the property from First 100
23 are distinct from the prior sale to First 100.

24 Further, assuming *arguendo* that the Lahrsees’ claims fall within 28 U.S.C. § 1367(a), 28
25 U.S.C. § 1367(c) provides circumstances when federal district courts may decline to exercise
26 supplemental jurisdiction over a claim, including when “the district court has dismissed all claims
27 over which it has original jurisdiction.” *Id.* § 1367(c)(3).

1 The court had original diversity jurisdiction over BNYM’s claim against the HOA,
2 Kupperlin, and the Lahrsees. (See ECF No. 1). But, “[w]hen all federal-law claims are eliminated
3 before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—
4 judicial economy, convenience, fairness, and comity—will point toward declining to exercise
5 jurisdiction over the remaining state-law claims.” *Phanthalasy v. Hawaiian Agents, Inc.*, No. CV
6 18-00285 JAO-WRP, 2019 WL 2305133, at *7 (D. Haw. May 30, 2019) (quotation marks omitted)
7 (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *Acri v. Varian Assocs.*,
8 114 F.3d 999, 1001 (9th Cir. 1997)). Thus, for the purposes of 28 U.S.C. § 1367(c)(3), the court
9 dismissed BNYM’s claim when it entered judgment in favor of BNYM. (ECF No. 74).
10 Consequently, 28 U.S.C. § 1367(c)(3) is also grounds for this court to decline to exercise
11 supplemental jurisdiction over the Lahrsees’ claims.

12 Accordingly, the HOA and Kupperlin’s motion to dismiss for lack of diversity is granted.

13 *B. Motion for partial summary judgment*

14 The Lahrsees’ motion for partial summary judgment seeks a judicial declaration that their
15 title insurance policy covers the foreclosure sale. (ECF No. 127). The Lahrsees argue that their
16 title insurance policy does not contain an “exception from coverage” pertaining to BNYM’s lien
17 claim arising out of the foreclosure sale. *Id.* Indeed, the parties agree that the title insurance policy
18 did not contain the exception when it was prepared on December 18, 2013, or when it was sent
19 again on March 31, 2014. (ECF Nos. 127 at 5; 142 at 9–10). However, Commonwealth and
20 Lawyers Title assert that the “[t]he omission of that [e]xception from the copy of the [p]olicy sent
21 to them *initially* resulted from a drafting error that occurred when the [p]olicy was prepared.”
22 (ECF No. 142 at 5).²

23 “Reformation is available as an equitable remedy to a party seeking to alter a written
24 instrument which, because of a mutual mistake of fact, fails to conform to the parties’ previous
25 understanding or agreement.” *Helms Constr. & Dev. Co. v. State*, 634 P.2d 1224, 1225 (Nev.
26 1981). Reformation is available “[w]here the agreement as reduced to writing omits or contains

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28 ² To that end, Commonwealth and Lawyers have filed an amended answer to Lahrsees’
third-party complaint and a counterclaim seeking reformation of the policy. (ECF No. 146).

1 terms or stipulations contrary to the common intention of the parties.” *Hearne v. Marine Ins. Co.*,
2 87 U.S. 488, 490 (1874). If there is such an omission, “the instrument will be corrected so as to
3 make it conform to their real intent.” *Id.*

4 Reformation is not available where there is simply ambiguity. Ambiguity is, by definition,
5 “[d]oubtfulness or uncertainty of meaning or intention, as in a contractual term or statutory
6 provision; indistinctness of signification, esp. by reason of doubleness of interpretation.” BLACK’S
7 LAW DICTIONARY 97 (10th ed. 2009). Therefore, ambiguity exists where a term is subject to two
8 reasonable interpretations. *Accord Hamdan v. Rumsfeld*, 548 U.S. 557, 719(2006) (“[A]n
9 ambiguous treaty provision . . . is susceptible of two plausible, and reasonable, interpretations . . .
10 .”); *Nay v. State*, 167 P.3d 430, 433 (Nev. 2007) (“Ambiguity is found where the statutory language
11 lends itself to two or more reasonable interpretations.” (internal quotation marks and footnote
12 citation omitted)); *McKay v. Board of Supervisors*, 730 P.2d 438, 442 (Nev. 1986) (“Where a
13 statute is capable of being understood in two or more senses by reasonably informed persons, the
14 statute is ambiguous.”).

15 In sum, “[r]eformation should be used to correct errors in expressing the terms of a contract
16 and should not be used to create new ones.” *25 Corp. v. Eisenman Chem. Co.*, 709 P.2d 164, 171
17 (Nev. 1985).

18 The Lahrses argue that “‘black letter’ law in Nevada” allocates the risk of error to the
19 insurance company “whether you call it an ambiguity or a ‘mistake’ in coverage.” (ECF No. 144
20 at 8). The Lahrses double-down on the argument, contending that “[t]he legal arguments of
21 Commonwealth and Lawyers Title here based on the ‘objective manifestations’ and ‘mutual
22 intention of the parties’ are hogwash indeed.” *Id.* Yet, the Lahrses’s argument relies on the
23 erroneous conflation of “mistakes”³ with “ambiguity.”

24 In this case, the terms of the exclusion are not subject to two reasonable interpretations and
25 are therefore not ambiguous. Indeed, Mr. Lahrs testified at his deposition that he understood the
26 “restrictions”—exceptions—in the policy were “things that the title insurance company is not
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28 ³ A mistake is “[a]n error, misconception, or misunderstanding; an erroneous belief.”
BLACK’S LAW DICTIONARY 1153 (10th ed. 2009).

1 willing to cover[.]” (ECF No. 142-4 at 9). Mr. Lahrs went on to testify that exception number 52⁴
2 would mean that BNYM’s lien claim was not covered by the Lahrses’ title insurance policy. *Id.*
3 at 12–13. Mr. Lahrs testified that exception number 52 was in the third amended preliminary
4 report. *Id.* Mr. Lahrs testified that exception number 52 would be part of the final title policy. *Id.*
5 at 13.

6 On the other hand, Commonwealth and Lawyers Title informed the Lahrses that “items
7 41–51 & 54–62 will be removed from the final title policy.” (ECF No. 127 at 5). Neither
8 Commonwealth nor Lawyers Title informed the Lahrses that exception number 52 would be
9 removed from the policy. *Id.* Nonetheless, the policy failed to include the exception. *Id.* at 6.
10 This is necessarily an omission—a mistake—for which reformation is an available remedy.

11 As a result, there is no ambiguity regarding what the exception meant. There is only a
12 question of whether the exception should have been in the policy as the parties discussed.
13 Commonwealth and Lawyers Title have presented evidence to demonstrate a genuine issue of
14 material fact regarding whether the policy ought to be reformed to conform with the parties’ actual
15 intent.

16 Accordingly, the Lahrses’ motion for partial summary judgment is denied.

17 *C. Motion to compel arbitration*

18 In addressing a motion to compel arbitration, the court’s role is “limited to determining (1)
19 whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses
20 the dispute at issue.” *Chiron Corp.*, 207 F.3d at 1130 (citing 9 U.S.C. § 4; *Simula, Inc.*, 175 F.3d
21 at 719–20).

22 The Ninth Circuit interprets arbitration agreements liberally and in favor of “the strong
23 federal policy favoring arbitral dispute resolution.” *See Simula, Inc.*, 175 F.3d at 720. “A court
24 will not ordinarily except a controversy from coverage of a valid arbitration clause unless it may
25 be said with positive assurance that the arbitration clause is not susceptible [to] an interpretation
26 that covers the asserted dispute.” *Bosinger v. Phillips Plastics Corp.*, 57 F. Supp. 2d 986, 990

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28 ⁴ Exception number 52 was discussed in the preliminary reports, but became exception
number 48 when incorporated into the policy.

1 (S.D. Cal. June 29, 1999) (quoting *Marchese v. Shearson Hayden Stone, Inc.*, 734 F.2d 414, 419
2 (9th Cir. 1984)) (internal quotations omitted).

3 The Lahrsees are former members of First 100 and, as part of their membership, executed a
4 binding operating agreement. (ECF No. 130 at 3). The operating agreement contained a binding
5 arbitration clause, which provided that “[a]ny dispute, controversy, or claim arising out of or
6 relating to this [a]greement or the breach thereof shall solely be settled by arbitration under the
7 Commercial Arbitration rules of the American Arbitration Association (‘AAA’).” *Id.* at 3–4).
8 First 100 and Bloom allege that the Lahrsees claims all “arise under an unambiguous arbitration
9 clause that they consented to when they both executed the [operating agreement].” *Id.* at 4.

10 The Lahrsees do not dispute that their crossclaims against First 100 and their third-party
11 complaint against Bloom is subject to the binding arbitration clause in the operating agreement.
12 (*See generally* ECF No. 133). To the contrary, the Lahrsees “have no objection or opposition to
13 submitting only those crossclaims to binding arbitration.” *Id.* at 3. However, the Lahrsees do
14 contend that “any other relief impliedly or ostensibly sought by this pending motion but for which
15 no motion has been properly made (i.e., liquidated damages), . . . are also subject to binding
16 arbitration.” *Id.* at 4.

17 Accordingly, Bloom and First 100’s motion to compel arbitration is granted, and the case
18 shall be stayed pending arbitration.⁵ The court declines to consider the issue of liquidated
19 damages, which is properly subject to arbitration agreement.

20 **IV. Conclusion**

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the HOA’s motion to
23 dismiss (ECF No. 92) be, and the same hereby is, GRANTED.

24 IT IS FURTHER ORDERED that the Lahrsees’ cross claims against the HOA and
25 Kupperlin be, and the same hereby are, DISMISSED without prejudice.

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27 ⁵ Although First 100 and Bloom argue that the court should dismiss the Lahrsees’ claims
28 for lack of jurisdiction, the FAA requires a stay of litigation when courts grant a petition to compel
arbitration. 9 U.S.C. § 3. The stay lasts “until such arbitration has been had.” *Id.*

1 IT IS FURTHER ORDERED that the Lahrse's motion for partial summary judgment (ECF
2 No. 127) be, and the same hereby is, DENIED.

3 IT IS FURTHER ORDERED that First 100 and Bloom's motion to compel arbitration
4 (ECF No. 130) be, and the same hereby is, GRANTED.

5 IT IS FURTHER ORDERED that the Lahrse's claims against First 100 and Bloom be, and
6 the same hereby are, STAYED pending the close of arbitration.

7 IT IS FURTHER ORDERED that the parties shall file a joint status report or stipulation of
8 dismissal within ten (10) days after the close of arbitration.

9 IT IS SO ORDERED.

10 DATED September 9, 2019.

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12 _____
UNITED STATES DISTRICT JUDGE